

WRIT PETITION NO. 20218 2007

Respondents.

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THE HON'BLE SRI JUSTICE BILAL NAZKI
AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

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WRIT PETITION NO. 20218 2007

ORDER: (per THE HON'BLE SRI JUSTICE BILAL NAZKI)

This writ petition is filed challenging an order passed in the *suo motu* revision by the revisional authority. The writ petition is filed mainly on two grounds that the officer who passed the order had not heard the petitioner and as such there is violation of rules of natural justice and the second contention is that although it is admitted that the transaction in question was covered by G.O.Ms. No. 562 dated 21.04.1982 as amended by G.O.Ms. No. 719 dated 19.11.2001, the authorities concerned did not consider that an exemption was available to the petitioner under the above referred G.O.

Counter has been filed and we have heard the learned Counsel for the parties.

Learned Counsel for the petitioner submits that show cause notice dated 14.10.2004 was given to him. On 19.11.2004 he filed objections. Immediately thereafter he was personally heard by the officer who had initiated revision. Thereafter an order was passed on 27.07.2007. This order was passed by the successor of the officer who had heard him on 19.11.2004. Therefore, the officer

who passed the order did not hear the petitioner and as such he could not have decided the matter on the basis of hearing by the officer who had been transferred. The respondents in their counter have denied that any personal hearing was given to the petitioner at any stage. It is submitted in the counter affidavit that personal hearings are only given when they are sought and the second respondent has contended in his counter-affidavit that the record does not disclose that his predecessor in office had at any time personally heard the petitioner, but the objections were on record and, therefore, he decided the matter on the basis of the material available before him. Now it is a question of fact whether the petitioner was personally heard on 19.11.2004 by the officer who had issued the show cause notice. There is nothing on record according to the learned Government Pleader that the petitioner had been heard by the officer, who had given originally the show cause notice. Therefore we do not go into the question whether any personal hearing at any stage was given to the petitioner.

There is another ground which is more serious and which pertains to the applicability of G.O.Ms. No. 562 and G.O.Ms. No. 719. It is specifically pleaded in the objections filed by the petitioner that he enjoys exemption under these G.Os and the second respondent in his order and counter- affidavit has accepted that a benefit was sought to be derived from G.O.Ms. No. 562 read with G.O.Ms. No. 719 but he has dismissed such a contention with the following words.

“Therefore, if at all any exemption is to be granted on the sales of Seedling, it would be available only from the date of publication of the G.O. in the gazette and no exemption would be available to the period anterior to the G.O.”

But he has not made any exercise to see whether the period

was relevant for the purpose of G.O. or not and according to the learned Counsel for the petitioner for more than four months he could have got the benefit under the G.O. even if it was correct to hold that the G.O. was applicable from the date it was issued. That exercise has also not been made by the second respondent. Therefore on the face of it, the order of the second respondent with respect to the period for which G.O. was applicable was without jurisdiction and manifestly illegal. Since the second respondent has failed to see the effect of G.O.Ms. No. 562 read with G.O.Ms. No. 719, we deem it appropriate to set aside the order passed by him and remand the case back to him, who shall decide the matter after hearing the petitioner and taking into consideration the effect of G.O.Ms. NO. 562 read with G.O.Ms. No. 719. The second respondent shall not, however, take any objection as to the period of limitation. After the case is remanded to him he shall hear the petitioner and decide all the objections filed by the petitioner including the applicability of the said G.Os.

The writ petition is accordingly disposed of.

BILAL NAZKI,J

Date: 29.10.2007

RAMESH RANGANATHAN,J

MRKR